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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte HENRY THOMAS UBIK, MONA PATEL,
JOSEPH KOWALSKI, ANTHONY JOSEPH CATALDO,
VICTOR JOSEPH KUDYBA, and TOM BACON

Appeal 2009-2342
Application 10/064,964
Technology Center 3600

Decided: August 5, 2009

Before HUBERT C. LORIN, ANTON W. FETTING, and
BIBHU R. MOHANTY, *Administrative Patent Judges*.

MOHANTY, *Administrative Patent Judge*.

DECISION ON APPEAL

STATEMENT OF THE CASE

The Appellants seek our review under 35 U.S.C. § 134 (2002) of the final rejection of claims 1-7 which are all the claims pending in the application. We have jurisdiction under 35 U.S.C. § 6(b) (2002).

SUMMARY OF THE DECISION

We AFFIRM.

THE INVENTION

The Appellants' claimed invention is directed to a method for automated collection of data and tracking of transportation vehicles from assembly to receipt at dealers, fleet sites and rental sites. In general the present invention relates to inventory management (Spec. [0012]). Claim 1, reproduced below, is representative of the subject matter of appeal.

1. A method for inventory management of a plurality of transportation vehicles wherein each vehicle has an active RF transmitter in communication with a diagnostic service bus on said vehicle, said method comprising the steps of:
 - defining a service area for active transmission between said RF transmitter and a server specific to said service area;
 - communicating data relevant to said transportation vehicle from said transmitter to said server automatically and in real time; and
 - determining an inventory of transportation vehicles within said predefined service area.

THE REJECTIONS

The Examiner relies upon the following as evidence in support of the rejections:

Heinrich

US 2002/0044058 A1

Apr. 18, 2002

Song

US 2003/0163233 A1

Aug. 28, 2003

The following rejections are before us for review:

1. Claims 1-7 are rejected under 35 U.S.C. § 103(a) as unpatentable over Song and Heinrich.

THE ISSUE

At issue is whether the Appellants have shown that the Examiner erred in making the aforementioned rejections.

This issue turns on whether it would have been obvious to combine Heinrich and Song to meet the claimed limitations for defining a service area for active transmission between an RF transmitter and a server and determining an inventory of vehicles within an area.

FINDINGS OF FACT

We find the following enumerated findings of fact (FF) are supported at least by a preponderance of the evidence:¹

- FF1. Heinrich discloses a wrist mounted RFID reader and antenna (Title). Heinrich discloses an RFID scanner 50 that is attached to a user's wrist (Fig. 3). Heinrich discloses the use of an RFID tag 30 in the system [0015].
- FF2. Heinrich discloses that RFID transponders are cost effective since they lack a power source and that they can be used in applications in which it desirable to track information regarding an object, including inventory

¹ See *Ethicon, Inc. v. Quigg*, 849 F.2d 1422, 1427 (Fed. Cir. 1988) (explaining the general evidentiary standard for proceedings before the Patent Office).

management, retailing shipping and distribution, vehicle toll collection, and many others [0006].

FF3. Song discloses a vehicle management apparatus (Title) that includes a vehicle data transmitter that sends various data about a vehicle that is running (Abstract).

FF4. Song discloses that the system sends information related to the car location in an accident [0070], in theft [0072], and for traffic information services [0078].

PRINCIPLES OF LAW

“Section 103 forbids issuance of a patent when ‘the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains.’” *KSR Int’l Co. v. Teleflex Inc.*, 550 U.S. 398, 406 (2007). The question of obviousness is resolved on the basis of underlying factual determinations including (1) the scope and content of the prior art, (2) any differences between the claimed subject matter and the prior art, (3) the level of skill in the art, and (4) where in evidence, so-called secondary considerations. *Graham v. John Deere Co.*, 383 U.S. 1, 17-18 (1966). *See also KSR*, 550 U.S. at 407 (“While the sequence of these questions might be reordered in any particular case, the [*Graham*] factors continue to define the inquiry that controls.”)

In *KSR*, the Supreme Court emphasized “the need for caution in granting a patent based on the combination of elements found in the prior art,” *id.* at 415-16, and discussed circumstances in which a patent might be

determined to be obvious. In particular, the Supreme Court emphasized that “the principles laid down in *Graham* reaffirmed the ‘functional approach’ of *Hotchkiss*, 11 How. 248.” *KSR*, 550 U.S. at 415, (citing *Graham*, 383 U.S. at 12), and reaffirmed principles based on its precedent that “[t]he combination of familiar elements according to known methods is likely to be obvious when it does no more than yield predictable results.” *Id.* at 416. The Court also stated “[i]f a person of ordinary skill can implement a predictable variation, § 103 likely bars its patentability.” *Id.* at 417. The operative question in this “functional approach” is thus “whether the improvement is more than the predictable use of prior art elements according to their established functions.” *Id.*

The Court noted that “[t]o facilitate review, this analysis should be made explicit.” *Id.* at 418 (citing *In re Kahn*, 441 F.3d 977, 988 (Fed. Cir. 2006) (“[R]ejections on obviousness grounds cannot be sustained by mere conclusory statements; instead, there must be some articulated reasoning with some rational underpinning to support the legal conclusion of obviousness.”) However, “the analysis need not seek out precise teachings directed to the specific subject matter of the challenged claim, for a court can take account of the inferences and creative steps that a person of ordinary skill in the art would employ.” *Id.*

ANALYSIS

The Appellants argue that the rejection of claims 1 is improper because Song is directed to notifying a user while the vehicle is in operation that it is time for maintenance or repair and that it would not be obvious to have a defined service area for such a vehicle (Ans. 5). The Appellants also

argue that there is no need for any data communication in Song when the vehicle is not in use (Br. 6). The Appellants further argue that Henrichs hand-free RF identification which is wrist mounted would not be a practical to combine with Song reference (Br. 7).

In contrast the Examiner has determined that it would have been obvious to combine the teachings of Song and Henrich to meet the claimed limitations (Ans. 4-8).

We agree with the Examiner. In *KSR*, the Supreme Court rejected the Federal Circuit's rigid application of its teaching, suggestion, motivation test in favor of an expansive and flexible approach. *Id.*, 550 U.S. at 415. The Supreme Court noted that often, it will be necessary "to look to interrelated teachings of multiple patents; the effects of demands known to the design community or present in the marketplace; and the background knowledge possessed by a person having ordinary skill in the art, all in order to determine whether there was an apparent reason to combine the known elements in the fashion claimed by the patent at issue." *Id.*, 550 U.S. at 418. The Supreme Court noted that the Court of Customs and Patent Appeals "captured a helpful insight" when it first established the teaching, suggestion, motivation test, but made clear that "the analysis need not seek out precise teachings directed to the specific subject matter of the challenged claim, for a court can take account of the inferences and creative steps that a person of ordinary skill in the art would employ." *Id.*, 550 U.S. at 418.

Here, Heinrich has disclosed that RFID transponders are cost effective since they lack a power source and that

RFID transponders can be used in applications in which it desirable to track information regarding an object, including inventory management, retailing shipping and distribution, vehicle toll collection, and many others [0006, emphasis added].

Thus, Heinrich has disclosed that RFID transponders may be used in applications where it is desirable to track the information of objects regarding inventory management, shipping and distribution, and even related to applications with vehicle tolls (FF2). Thus, one of ordinary skill in the art would infer that the RFID transponders could be used for inventory management and shipping of any manufactured items, including vehicles as an obvious way to track inventory. Song further discloses that a vehicles location may be tracked by disclosing that vehicles may transmit their locations for traffic information or in the cases of accidents and theft (FF4). One of ordinary skill in the art would have seen Heinrich's use of RFID transponders for tracking information relating to inventory management and shipping and distribution extended to include vehicles which have been shown to include transponders as disclosed in Song as an obvious, predictable combination of elements for their known functions. Such an application of the RFID transponders would necessarily have a defined service area to track the vehicles in a known range. For these reasons the rejection of claim 1 is sustained. The Appellants have not argued the limitation of claims 2-7 separately and the rejection of these claims is sustained for the same reasons given above.

CONCLUSIONS OF LAW

We conclude that Appellants have failed to show that the Examiner erred in rejecting claims 1-7 under 35 U.S.C. § 103(a) as unpatentable over Song and Heinrich.

DECISION

The Examiner's rejection of claims 1-7 is sustained.

AFFIRMED

JRG

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